

## EXHIBIT 2-A



# DRK PHOTO

8-5-97

# INVOICE

## 005443

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07/02/97

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Editor: Hilary Newman

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IMAGE	DESCRIPTION	SIZE	PHOTOGRAPHER	
847736	(H) (P-38) MANY MALE WALRUSES SUNNING ON BEACH / ROUND ISLAND, AK.	1/4 PAGE	TOM BLEDSOE / RAYMOND PHILLIPS	\$225.00
847527	(H) (P-167) SEDIMENTARY ROCK FORMATION / MESA (REUSE)	1/4 PAGE	TOM AND SUSAN BEAN, INC.	\$168.75
847877	(V) (P-187) BUMBLE BEE WORKER COLLECTING POLLEN ON FLOWER	1/4 PAGE	DWIGHT KUHN	\$225.00

DRK PHOTO Federal ID # 39-1452673

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(b) Reimbursement for loss or damage shall be \$2,000 per original transparency and \$200 per duplicate transparency unless otherwise set forth in writing. Payment for loss or damage to any photograph does not entitle Client to any rights whatsoever in any photograph. Agency will reimburse Client for any lost photograph subsequently found and returned undamaged to Agency within three (3) months from the date Agency issued invoicing for said loss. Reimbursement shall be equal to the amount paid for loss, minus applicable holding fees as set forth in clause (a) above.

(c) Submission and use rights granted are specifically based on the condition that Client assumes insurers liability to (1) indemnify Agency for loss, damage or misuse of any photograph and (2) return all photographs prepaid and fully insured, safe and undamaged by bonded messenger, air freight or registered mail. Client assumes full liability for its employees, agents, assigns, messengers, printers, and freelance researchers for any loss, damage or misuse of the photographs.

(d) Adjacent credit line, or on-screen credit line for Agency: "© [year of first publication] [photographer's name]/[DRK PHOTO]" must accompany photo use, or invoiced fee shall be tripled. Unless otherwise indicated by Agency, the copyright year of a photograph is assumed to be the same year as in the date of Agency's invoice. If there is more than one supplier of photography to the product, photo credit shall be equal to all other suppliers of photography to the product. Client will provide copyright protection on any use and assign same to Agency immediately upon request.

(e) Client will indemnify Agency against all claims and expenses arising out of the use of any photograph unless a valid model or other release was specified to exist, in writing, by Agency. Unless so specified no valid release exists. Client agrees that all photographs are being licensed "as is", and Agency shall not be held liable for any damages or claims which might arise from any defect in any photograph or its caption information or in any way from its reproduction. In any event, Agency's liability for all claims shall not exceed the actual license fee paid for the offending photograph. Client warrants that it will not use any licensed photograph in an untruthful manner that would defame the Agency. Agency will not knowingly license to Client any photograph that is in violation of any other's rights.

(f) Time is of the essence for receipt of payment and return of photographs. No use rights are transferred until payment of Agency's invoice(s) for reproduction of the photograph is received in full. Use of any photograph before payment of Agency invoicing for such use constitutes willful copyright infringement entitling Agency to rescind all rights and rendering the Client liable for payment of damages. Payment is required within 30 days of invoice; a 1 1/4% per month service charge on the unpaid balance is applied thereafter. Payment is a condition of the grant of rights, failure to pay promptly and accurately constitutes willful copyright infringement. Use beyond the scope of this license constitutes willful copyright infringement. Adjustment of the amount, or Terms and Conditions must be requested within 10 days of invoice date, and agreed to in writing by the parties hereto.

(g) Any cancellation of invoicing must be made in writing within 30 days of the date of issue. Agency may at its discretion choose to cancel said invoicing and issue a credit memo against the

corresponding invoice. Canceled invoices are subject to a cancellation (kill) fee equal to 50% of the reproduction fee billed.

(h) Client agrees to indemnify and hold Agency harmless against all claims arising in any manner whatsoever from the unauthorized use of any photograph supplied to Client by Agency.

(i) Client shall provide two free copies of uses appearing in print, and two free copies of software product if a digital/electronic use.

(j) Client may not assign or transfer this agreement. Holding or use of the photographs constitutes acceptance of these Terms and Conditions, hereby incorporating Article 2 of the Uniform Commercial Code. The Terms and Conditions set forth herein and on the reverse side hereof constitute the entire agreement between Agency and Client with respect to the photograph(s) being used pursuant to this invoice, and cannot be modified or amended except by agreement in writing, signed by both Agency and Client. No waiver is binding unless set forth in writing and signed by the parties hereto. These Terms and Conditions supersede any and all terms on the Client's purchase order.

(k) Any dispute regarding this document, including its validity, interpretation, performance or breach shall be arbitrated in Phoenix, Arizona under rules of the American Arbitration Association and the laws of the State of Arizona. Judgment on the Arbitration Award may be entered in the highest Federal or State Court having jurisdiction. Client shall pay all arbitration and Court costs, reasonable Attorney's fees, plus legal interest on any award or judgment.

(l) With all transactions in which payment is received in the form of royalties Agency and/or its duly authorized representative shall have the right at any time and without limitation to check, inspect, and audit the Client's books, records, and accounts in order to verify or clarify any and all such statements, accountings, and payments. The expense of such examination shall be borne by Agency unless errors of accounting amounting to five (5%) per cent or more of the totals sums paid or payable to Agency shall be found to its disadvantage, in which case the expense of such examination shall be borne by the Client.

(m) No projection of original photographs is allowed.

(n) Client shall pay a \$25.00 servicing/remounting fee for any unused/unpublished transparency returned with a cut mount.

(o) No photograph may be reproduced, utilized, or transmitted in any form or by any means, electronic or mechanical, including photocopying, recording, or by any information storage and retrieval system without permission in writing from Agency.

(p) Client agrees that no permanent data base may be retained by Client or any third parties of any photograph from Agency whether licensed for use in the product or otherwise. If requested, Client shall provide written proof to Agency that all files containing the stored photograph(s) have been destroyed.

(q) Client shall not market, distribute, sub-license, lease or rent any photograph on a separate basis or use any photograph in any manner other than in connection with the specific product licensed. Client shall restrict end-users in the same manner and shall not permit storage, manipulation, or individual use of any photograph. End-users shall be restricted from broadcasting any photograph on any on-line services.

(r) Client shall not alter or manipulate any photograph beyond the requirements of normal image enhancement or cropping, and nothing shall be done to change the integrity of the photograph.

(s) Client agrees that these Terms and Conditions are made pursuant to Article 2 of the Uniform Commercial Code and agrees to be bound by same, including specifically clause (k) above to arbitrate disputes.





# DRK PHOTO

265 Verde Valley School Rd., Sedona, AZ 86351 U.S.A.  
(520) 284-9808 FAX (520) 284-9096  
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2-24-99

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Editor: Jill Hilycord 212-850-6359

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IMAGE	DESCRIPTION	SIZE	PHOTOGRAPHER	Rate
261121	(V) (P-25) TOWERS OF PAINE, PATAGONIA, CHILE	FULL PAGE CO	BARBARA ROWELL	\$430.00
848472	(H) (P-54) S.P. CRATER CINDER CONE & LAVA FLOW / AERIAL (REUSE)	1/4 PAGE	TOM AND SUSAN BEAN, INC.	\$187.50
241395	(V) (P-72) GLEN CANYON DAM DISCHARGING WATER, FLOOD EXPERIMENT	FULL PAGE	TOM AND SUSAN BEAN, INC.	\$430.00
193780	(V) (P-76) NEW ZEALAND, AERIAL / GLACIAL FED RAKIA RIVER (REUSE)	1/4 PAGE	JOHN EASTCOTT / YVA MOMATIUK	\$187.50
138206	(H) (P-127) CUMULUS CLOUDS AND HORIZON, UTAH (REUSE)	1/4 PAGE	TOM AND SUSAN BEAN, INC.	\$187.50
157829	(H) (P-128) CUMULONIMBUS CLOUD OVER PAINTED DESERT, ARIZONA (REUSE)	1/4 PAGE	TOM AND SUSAN BEAN, INC.	\$187.50
161694	(V) (P-136) WIND GENERATORS AND MOUNTAINS, GORGONIO PASS, CA. (REUSE)	FULL PAGE CO	STEPHEN J. KRASEMANN	\$320.00
127549	(H) (P-137) HURRICANE DAMAGE, HURRICANE DIANA / NC, USA (REUSE)	1/2 PAGE	STEPHEN J. KRASEMANN	\$210.00
846890	(V) (P-158) DANDELION PLANT, CUT-AWAY OF ROOT SYSTEM	1/4 PAGE	DWIGHT KUHN	\$250.00
195514	(H) (P-167) TWIN LAKES IN BEARTOOTH MOUNTAINS, WYOMING (FROM ABOVE)	1/4 PAGE	BARBARA GERLACH	\$250.00

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(b) Reimbursement for loss or damage shall be \$2,000 per original transparency and \$200 per duplicate transparency unless otherwise set forth in writing. Payment for loss or damage to any Image does not entitle Client to any rights whatsoever in any Image. Agency will reimburse Client for any lost Image subsequently found and returned undamaged to Agency within three (3) months from the date Agency issued invoicing for said loss. Reimbursement shall be equal to the amount paid for loss, minus applicable holding fees as set forth in clause (a) above.

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(s) Client shall not alter or manipulate any Image beyond the requirements of normal image enhancement or cropping and nothing shall be done to change the integrity of the images.

(t) Unless otherwise specified in writing by Agency, reproduction rights shall mean exclusive to the specific image. Agency can control within the confines of its own operations. Agency will not be held responsible for the actions of others.

(u) Client agrees that these Terms and Conditions are made pursuant to Article 2 of the Uniform Commercial Code and agrees to be bound by same, including specifically clause (k) above to arbitrate disputes. Objection to any terms must be made in writing within ten (10) days.





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**TOTAL DUE: \$337.50**

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(o) Client shall pay a \$25.00 servicing/remounting fee for any unused/unpublished image returned with a cut mount.

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Editor: Hilary Newman

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846784	(H) (P-47) CHARLES RIVER, MA., PURPLE LOOSESTRIPE IN BLOOM (94159-26)	1/4 PAGE	STEPHEN G. MAK	\$187.50
112571	(H) (P-54) JOSHUA TREE, ROCK, & LANDSCAPE, JOSHUA TREE N.M., CA.	1/4 PAGE	STEPHEN J. KRAEMANN	\$187.50
211122	(V) (P-55) BRITTLBUSH, SAGUARO, AND MOON /TONTON N.F.,AZ.(AZ-02M-WF)	1/4 PAGE	KIM HEACOX	\$187.50
848535	(H) (P-126) ROCKY MT. BIGHORN RAM & EWE ON MOUNTAINSIDE CLIFF(RD-1218	1/4 PAGE	TOM & PAT LEESON	\$187.50
207011	(H) (P-189) ACID DRAINAGE, FROM ABANDONED MINE SITE	1/4 PAGE	JOHN CANCALOSI	\$187.50

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"Photographer's Name"/DRK PHOTO

IMAGE	DESCRIPTION	SIZE	PHOTOGRAPHER	
848870	(H) (P-21) CALVING ICEBERG, HUBBARD GLACIER, ALASKA	1/2 PAGE	TOM AND SUSAN BEAN, INC.	\$281.25
207011	(H) (P-44A) ACID DRAINAGE, ABANDONED MINE SITE	1/4 PAGE	JOHN CANCALOSI	\$250.00
848472	(H) (P-57) CINDER CONE/AERIAL	1/4 PAGE	TOM AND SUSAN BEAN, INC.	\$250.00
848468	(H) (P-80) IGNEOUS ROCK SILL INTRUDED IN SEDIMENTARY LAYER, TEXAS	1/4 PAGE	TOM AND SUSAN BEAN, INC.	\$250.00
128853	(H) (P-85A) FELLED TREES, DEVASTATION ON SLOPES OF MT. SAINT HELENS	1/4 PAGE	JEFF HUTCHERSON	\$250.00
157222	(V) (P-126) RIPPLE PATTERNS IN ROCK / COLORADO NATIONAL MONUMENT	1/4 PAGE	STEPHEN TRIMBLE	\$250.00
147683	(H) (P-151) FOSSIL / TRILOBITE GROUP (UOK-0005) (PICKUP/REUSE)	1/4 PAGE	TOM WIEWANDT	\$187.50
214952	(H) (P-183) SUNSET LIGHT ON DOWNTOWN TUCSON W/CATALINA MTNS. BEHIND	1 1/2 PAGE	TOM AND SUSAN BEAN, INC.	\$515.62

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IMAGE	DESCRIPTION	SIZE	PHOTOGRAPHER	
200035	(H) (P-74) NATIVE PRAIRIE / IOWA	1/2 PAGE	ANNIE GRIFFITHS BELT	\$140.62
901854	(V) (P-149) AERIAL OF PERMAFROST POLYGONS / ALASKA	1/4 PAGE	STEPHEN J. KRAEMANN	\$125.00
184640	(H) (P-170) AERIAL - GLACIAL KETTLE POND	1/2 PAGE	TOM AND SUSAN BEAN, INC.	\$140.62
160936	(H) (P-188) FLASH FLOOD / FLOODED ARROYO (UAZ-2185)	1/2 PAGE	TOM WIEWANDT	\$140.62
846735	(H) (P-191) EXPOSED ROCK LAYERS / ERODED RAPLEY MONOCLINE	SPREAD CO	TOM AND SUSAN BEAN, INC.	\$343.75
846735	(H) (P-191A) EXPOSED ROCK LAYERS / ERODED RAPLEY MONOCLINE	1/4 PAGE	TOM AND SUSAN BEAN, INC.	\$125.00
164973	(H) (P-192) BRIGHT ANGEL CANYON / GRAND CANYON (403GS040X2)	1/2 PAGE	LARRY ULRICH STOCK PHOTO., INC.	\$140.62

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**Description of Materials****Rate**

IMAGE	DESCRIPTION	SIZE	PHOTOGRAPHER	
187025	(V) (P6) AERIAL, MT. RAINIER, EAST SIDE, CASCADE MNTS, WA (UWA0341)	1/4 PAGE	TOM WIEWANDT	\$170.00
164731	(H) (P6) OCEAN & SANDSTONE HEADLANDS, DAVENPORT, CA. (406CM009X3)	3/4 PAGE	LARRY ULRICH STOCK PHOTO.,INC.	\$225.00
849846	(H) (P8) RAINFOREST SCENE, CLOUDS & FOREST, PENAS BLANCAS VLLY, C.R.	1/4 PAGE	MICHAEL FOGDEN	\$170.00
254853	(H) (P13) AERIAL, LOGGING WEST OF GRAND TETONS N.P., WYOMING	1/4 PAGE	MICHAEL P. COLLIER	\$170.00
190628	(H) (P14) RAINFOREST STREAM EDGED WITH PALMS, COSTA RICA	1/4 PAGE	MICHAEL FOGDEN	\$170.00
904674	(V) (P38) AERIAL, CAPE COD AND SURF	1/4 PAGE	STEPHEN J. KRAEMANN	\$170.00
109581	(V) (P40) LUNCH CREEK WATERFALL, MONTANA	1/4 PAGE	STEPHEN J. KRAEMANN	\$170.00
200422	(H) (P54) OLD SANTE FE FREIGHT STATION, DOWNTOWN FLAGSTAFF, AZ.	1/4 PAGE	TOM AND SUSAN BEAN, INC.	\$170.00
252135	(H) (P65) SLEEPY HOLLOW FARM, VERMONT (10/96/315)	1/4 PAGE	JEREMY WOODHOUSE	\$170.00
165506	(H) (P87) SAILBOAT SAILING NEAR JERVIS INLET, B.C.	FULL PAGE CO	TOM AND SUSAN BEAN, INC.	\$281.25
211945	(H) (P119) RAINBOW VALLEY, SOUTH OF ALICE SPRINGS, AUSTRALIA	1/4 PAGE	MICHAEL FOGDEN	\$170.00
117227	(H) (P132) INNER COAST, SUMMER OAK GRASSLANDS & HILLS, CA.	1/4 PAGE	DAVID CAVAGNARO	\$170.00
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# DRK PHOTO

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drkphoto@sedona.net • www.drkphoto.com

# INVOICE

**007767**

Page - 2

To: John Wiley & Sons  
6th Floor Photo Dept.  
605 Third Avenue  
New York, NY 10158-0012

Date

10/10/01

P.O. No.

212-850-6359  
Editor: Jennifer MacMillan

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IMAGE	DESCRIPTION	SIZE	PHOTOGRAPHER	
164262	(V) (P337) BABY BLUE-EYES & CA. POPPIES, (406SR016X3)	1/4 PAGE	LARRY ULRICH STOCK PHOTO., INC.	\$170.00
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## Terms and Conditions

(a) "Agency" hereafter refers to DRK PHOTO. "Client" hereafter refers to the party to whom Agency has consigned this document "To:", and/or the party shipped to on its face. "Images" hereafter shall be defined as transparencies, negatives, prints, scans, or digital images. Except where outright purchase is specified, all images and rights not expressly granted remain the exclusive property of Agency without limitation. Client acquires only the rights specified and agrees to return all images by the sooner of 30 days after publication or 1 month after initial delivery date, or pay thereafter \$10.00 per week per image. If images are not returned within three months of the date of delivery, Agency may at its discretion, after giving notice, presume the images are lost and proceed with appropriate invoicing.

(b) Reimbursement for loss or damage shall be \$2,000 per original transparency and \$200 per duplicate transparency unless otherwise set forth in writing. Payment for loss or damage to any image does not entitle Client to any rights whatsoever in any image. Agency will reimburse Client for any lost image subsequently found and returned undamaged to Agency within three (3) months from the date Agency issued invoicing for said loss. Reimbursement shall be equal to the amount paid for loss, minus applicable holding fees as set forth in clause (a) above.

(c) Submission and use rights granted are specifically based on the condition that Client assumes insurers liability to (1) indemnify Agency for loss, damage or misuse of any image and (2) return all images prepaid and fully insured, safe and undamaged by bonded messenger, air freight or registered mail. Client assumes full liability for its employees, agents, assigns, messengers, printers, and freelance researchers for any loss, damage or misuse of the images.

(d) Adjacent credit line, or on-screen credit line for Agency: "© [year of first publication] [photographer's name]/DRK PHOTO" must accompany image use, or invoiced fee shall be tripled. Unless otherwise indicated by Agency, the copyright year of any image is assumed to be the same year as in the date of Agency's invoice. If there is more than one supplier of images to the product, photo credit shall be equal to all other suppliers of images to the product. Client will provide copyright protection on any use and assign same to Agency immediately upon request, without charge.

(e) Client will indemnify Agency against all claims and expenses arising out of the use of any image unless a valid model or other release was specified to exist, in writing, by Agency. Unless so specified no valid release exists. Client agrees that all images are being licensed "as is", and Agency shall not be held liable for any damages or claims which might arise from any defect in any image or its caption information or in any way from its reproduction. Client must satisfy himself that all necessary rights, consents, or permissions as may be required for reproduction are secured. In any event, Agency's liability for all claims shall not exceed the actual license fee paid for the offending image. Client warrants that it will not use any licensed image in an untruthful manner that would defame the Agency. Agency will not knowingly license to Client any images that are in violation of any other's rights.

(f) Time is of the essence for receipt of payment and return of images. No use rights are transferred until payment of Agency's invoice(s) for reproduction of the image is received in full. Use of any image before payment of Agency invoicing for such use constitutes willful copyright infringement entitling Agency to rescind all rights and rendering the Client liable for payment of damages. Payment is required within 30 days of invoice, a 2% per month service charge on the unpaid balance is applied thereafter. Payment is a condition of the grant of rights, failure to pay promptly and accurately constitutes willful copyright infringement. Use beyond the scope of this license constitutes willful copyright infringement. In the event of unauthorized use, it is agreed that a retroactive license can be made available at a fee of ten (10) times the normal reproduction charge. Adjustment of the amount, or Terms and Conditions must be requested within 10 days of invoice date, and agreed to in writing by the parties hereto.

(g) Any cancellation of invoicing must be made in writing within 30 days of the date of issue. Agency may at its discretion choose to cancel said invoicing and issue a credit memo against the corresponding invoice. Canceled invoices are subject to a cancellation (kill) fee equal to 50% of the reproduction fee billed.

(h) Client agrees to indemnify and hold Agency harmless against all claims arising in any manner whatsoever from the unauthorized use of any image supplied to Client by Agency.

(i) Client shall provide two free copies of user appearing in print, and two free copies of software product if a digital/teletext use.

(j) Client may not assign or transfer this agreement. Holding or use of the image constitutes acceptance of these Terms and Conditions, hereby incorporating Article 2 of the Uniform Commercial Code. The Terms and Conditions set forth herein and on the reverse side hereof constitute the entire agreement between Agency and Client with respect to the image(s) being used pursuant to this invoice, and cannot be modified or amended except by agreement in writing signed by both Agency and Client. No waiver is binding unless set forth in writing and signed by the parties herein. These Terms and Conditions supersede any and all terms on the Client's purchase order.

(k) Any and all disputes regarding this document, including its validity, interpretation, performance or breach, with the exception of copyright claims shall be settled by arbitration in Phoenix, Arizona, under rules of the American Arbitration Association and the laws of the State of Arizona. Judgment on the Arbitration Award may be entered in the highest Federal or State Court having jurisdiction. Client shall pay all arbitration and Court costs, reasonable Attorney's fees, plus legal interest on any award or judgment.

(l) Copyright claims shall be brought in the Federal Court having jurisdiction.

(m) With all transactions in which payment is received in the form of royalties Agency and/or its duly authorized representative shall have the right at any time and without limitation to check, inspect, and audit the Client's books, records, and accounts in order to verify or clarify any and all such statements, accountings, and payments. The expense of such examination shall be borne by Agency unless errors of accounting amounting to five (5%) per cent or more of the total sums paid or payable to Agency shall be found to its disadvantage in which case the expense of such examination shall be borne by the Client.

(n) No projection of original images is allowed.

(o) Client shall pay a \$25.00 servicing/reworking fee for any unused/unpublished image returned with a cut mount.

(p) No images may be reproduced, utilized, or transmitted in any form or by any means, electronic or mechanical, including photocopying, recording, or by any information storage and retrieval system without permission in writing from Agency.

(q) Client agrees that no permanent data base may be retained in Client or any third parties of any images from Agency whether licensed for use in the product or otherwise. If requested Client will provide written proof to Agency that all files containing the images have been destroyed.

(r) Client shall not market, distribute, sub-license, lease or sell any images on a separate basis or use any images in any manner other than in connection with the specific product licensed. Client shall restrict end-users in the same manner and shall not permit storage, manipulation, or individual use of any images. End-users shall be restricted from broadcasting any images on any on-line medium.

(s) Client shall not alter or manipulate any image beyond the requirements of normal image enhancement or cropping, and handling shall be done to change the integrity of the images.

(t) Unless otherwise specified in writing by Agency, exclusive reproduction rights shall mean exclusive to the specific image in Agency can control within the confines of its own operations. Agency will not be held responsible for dissemination of images.

(u) Client agrees that these Terms and Conditions are made pursuant to Article 2 of the Uniform Commercial Code and agrees to be bound by same, including specifically clause (k) above to arbitrate disputes. Objection to any terms must be made in writing within ten (10) days.

Rev. 01/05/00

DRK v. Wiley AAA 00171



**DRK PHOTO Terms and Conditions of Use Submission Form**

Submission of images for examination or use is conditioned upon the Recipient agreeing to all the terms contained herein. If you object to any of these terms including the arbitration or stipulated damage provisions, you must return the images immediately.

**TERMS RELATIVE TO SUBMISSION**

- Photographs, transparencies, negatives, illustrations, digital images or any visual depiction (hereinafter "images") may be held for 30 days approval. Unless a longer period is requested and granted by DRK PHOTO in writing, a holding fee of \$10 dollars per week per image will be charged after such 30 day period and up to the time of return.
- Images may not be used in any way, including layouts, sketches, xerography or scanning until submission of and payment of an invoice indicating Recipient's right to use same or indicating the purchase of the image(s) outright, which shall be only on the terms of use hereinafter specified. Projection of any transparency is not permitted. You may not ARCHIVE, REPUBLISH or TRANSMIT images on any DATABASE without DRK PHOTO's prior written consent. You may not remove any image from its cardboard mount. You will be charged a \$200 fee for any removal or damage to the mount without consent.
- Recipient is solely responsible for loss or damage to images delivered to it from the time of receipt until return to DRK PHOTO. Recipient shall be responsible for the safe delivery and return of images to DRK PHOTO and shall indemnify DRK PHOTO against any loss or damage to images in transit or while in possession of Recipient. This agreement is not considered a bailment and is specifically conditioned upon the images so delivered being returned to DRK PHOTO in the same condition as delivered. Duplicate transparencies, film negatives, digital files and copy prints will not be accepted in exchange for a lost or damaged image. Recipient assumes an insurer's liability herein for the safe and undamaged return of the images to DRK PHOTO. Such images are to be returned by bonded messenger or by registered mail (return receipt requested), prepaid and fully insured, with description of contents enclosed.
- The monetary damage for loss or damage of an original color transparency or image shall be determined by the value of each individual image. Recipient agrees however, that the reasonable value of such lost or damaged transparency shall be two thousand (\$2,000) dollars, that a lost or damaged black-and-white print is two hundred (\$200) dollars and a duplicate transparency is two hundred (\$200) dollars. DRK PHOTO agrees to the delivery of the goods herein only upon the express covenant and understanding by Recipient that the terms contained in this Paragraph are material to this Agreement. Recipient assumes all responsibility for its employees, agents, assigns, messengers and freelance researchers for the loss, damage or misuse of the images.

**TERMS AS TO USE**

- Unless otherwise specifically stated, images remain the property of DRK PHOTO or the particular photographers. Upon submission of and payment of an invoice to DRK PHOTO a license is only granted to use the images for the use specified on the invoice and for no other purpose, unless such images are purchased outright. Such use is granted for the United States only, and only for a one-year period, unless otherwise specified. Recipient does not acquire any right, title or interest in or to any image, including without limitation, any electronic reproduction or promotional rights, and will not make, authorize or permit any use of the particular image(s), plates(s) or digital files made therefrom other than as specified herein. Full credit and copyright information must remain with the image. Any authorized duplicate must be returned to DRK PHOTO after use. Used images are to be returned within three months after date of invoice, except in cases of outright purchase. Recipient agrees to pay, as reasonable charges, the sum of ten (\$10) dollars per week per image after such three-month period to date of return. If an image is not returned by six months after the invoice date, holding fees will cease to accrue and at that time will become fixed and the image(s) will be deemed to be lost and liquidated damage provisions shall govern.
- If Recipient desires to re-use an image or extend previous usage, then Recipient must request and pay for additional rights prior to publication. You agree not to make, authorize or permit any use of an image or its derivative (use of an image as a source to create another image) except as authorized by the invoice. In the event you use an image for any use other than that indicated on the invoice, including but not limited to the number of uses, the publication using, or the size of reproduction, DRK PHOTO agrees to forgo its right to sue for copyright infringement and breach of contract if you pay, as liquidated damages, a sum equal to ten (10) times the maximum price we could have charged for such use, within 10 (ten) days of us billing such fee. This is not a penalty but an agreed fair use charge. If you fail to make such payment in ten (10) days, we shall have the right to sue for copyright infringement and breach of contract. No model releases or other releases exist on any images unless DRK PHOTO specifies the existence of such release in writing. Recipient shall indemnify DRK PHOTO against all claims arising out of the use of any images where the existence of such release has not been specified in writing by DRK PHOTO. In any event, the limit of liability of DRK PHOTO shall be the sum paid to it per the invoice for the use of the particular image involved. (We warrant) DRK PHOTO harmless from all claims for the use of the images, including defamatory use. DRK PHOTO gives no right or warranties with respect to the use of names, trademark, logos, types, registered or copyrighted designs or works of art depicted in any image, and the client must satisfy himself that all necessary rights, consents or permissions as may be required for reproduction are secured.
- Digital files are provided "as is". DRK PHOTO makes no representation or warranty, either express or implied, including but not limited to any implied warranties of non-infringement, fitness for any particular purpose, noninfringement, quality of image, or compatibility with any computer hardware or other equipment, operating system or software program. You may have additional rights under some state laws.
- Unless otherwise specified in writing by DRK PHOTO, "exclusive" reproduction rights shall mean exclusive to the specific image as DRK PHOTO can control within the confines of its own operations. DRK PHOTO is not responsible for any copying of the same image(s) by other parties.
- This agreement is not assignable or transferable on the part of the Recipient.
- This contract contains all the terms of the agreement between DRK PHOTO and Recipient concerning delivery and review of images, and no terms and conditions may be added or deleted unless made in writing and signed by both DRK PHOTO and Recipient. These terms and the terms of any subsequent invoice supersede any and all terms of the Client's purchase order. Any subsequent invoice DRK PHOTO may issue may contain additional terms relating to the rights granted and the type of use allowed. There is at the essence in the performance by Recipient of its obligations and return of images hereunder. No rights are granted until payment is made to DRK PHOTO even though Recipient has received an invoice.
- Payment herein is to be net thirty (30) days. A service charge of two (2%) percent per month on any unpaid balance will be charged thereafter. Any claims for adjustment or rejection of terms must be made to DRK PHOTO within ten (10) days after receipt of invoice. In the event that any images are used by Recipient in publications, then Recipient shall send to DRK PHOTO, on a semi-annual basis (June 30 and December 31) a certified statement setting forth the total number of sales, subcontracts, adaptations, transactions and any other uses. Recipient shall provide DRK PHOTO with two (2) true copies of such publication immediately upon printing.
- With all transactions in which payment is received in the form of royalties DRK PHOTO and/or its duly authorized representative shall have the right at any time and without limitation to check, inspect, and audit the Client's books, records, and accounts in order to verify or clarify any and all such statements, accountings, and payments. The expense of such examination shall be borne by DRK PHOTO unless errors of accounting amounting to five (5%) percent or more of the total sums paid or payable to DRK PHOTO shall be found to its disadvantage, in which case the expense of such examination shall be borne by the Client.
- Rights are being reserved to Recipient when an invoice is created. If Recipient does not use the invoiced image it must notify DRK PHOTO within five (5) days from receipt of the invoice. If Recipient fails to do so, it is responsible for full payment of the invoice.
- Images used editorially should bear a credit line as indicated by DRK PHOTO. DRK PHOTO reserves the right to charge a fee for use without a credit. Recipient must register copyright in their name to afford protection to the image. Such copyright shall be immediately reassigned upon request, without charge.
- All rights not specifically granted herein to recipient are reserved for DRK PHOTO's use and disposition without any limitations whatsoever.
- Recipient agrees that the above terms are made pursuant to Article 2 of the UNIFORM COMMERCIAL CODE and agrees to be bound by same. Objection to any terms must be made in writing within ten (10) days.

**DISPUTES OR CLAIMS ARISING OUT OF SUBMISSION AND/OR USE**

- Any and all disputes, with the exception of copyright claims, under or in connection with this agreement, including, without limitation, the validity, interpretation, performance and breach hereof, shall be settled by arbitration in Arizona pursuant to the rules of the American Arbitration Association. Judgment upon the award rendered may be entered in the highest court of the forum, State or Federal, having jurisdiction. This agreement, its validity and effect, shall be interpreted under and governed by the laws of Arizona.
- If Recipient of this contract is an agent for or an employee of a non-US company but operates in a place of business in the United States or its territories, said Recipient expressly agrees that any disputes regarding this contract shall be adjudicated within the United States in the manner described here.
- Copyright claims shall be brought in the Federal court having jurisdiction.

If DRK PHOTO is caused to present claims or suit as a result of any breach of the above terms set forth, it shall be made whole for such reasonable legal fees or costs by Recipient or user herein.